

EXHIBIT 2.2: CONCORDANCE BETWEEN EXISTING SECTION 106 REGULATIONS AND SECTION 106 PROGRAMMATIC AGREEMENT

36 CFR §800	Existing Regulation	Programmatic Agreement
800.1	Requires FHWA to take into account effect of its undertakings on historic properties and afford ACHP an opportunity to comment	No change
800.2(a)	FHWA is legally responsible for Section 106 compliance	FHWA delegates some decision-making responsibility to Caltrans but retains ultimate authority over and responsibility for legal compliance
800.2(a)(1)	FHWA ensures all actions taken by its employees or contractors meet the Secretary of the Interior's Standards	No change; see Stipulation III and Attachment 1
800.2(a)(3)	FHWA responsible for ensuring documents prepared by non-federal agencies meet applicable standards and guidelines	FHWA delegates quality assurance responsibilities to Caltrans; see Stipulation XVI
800.2(c)(4)	FHWA may delegate other agencies to initiate consultation with SHPO but remains legally responsible for compliance with Section 106	FHWA authorizes Caltrans to consult directly with SHPO, but remains legally responsible for compliance
800.2(c)(5)	Individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties	No change
800.2(d)(1-2)	FHWA solicits public comment and involvement	FHWA delegates this responsibility to Caltrans; see Stipulation V and VI
800.3(a) 800.3(a)(1)	FHWA determines whether proposed action is an undertaking, and if so, whether it has the potential to affect historic properties. If not, FHWA has no further obligations under Section 106	FHWA delegates this authority to Caltrans. Defines classes of undertakings that are Screened from further review under Section 106; see Stipulation VII and Attachment 2
800.3(e)	FHWA solicits public comment and involvement	FHWA delegates this responsibility to Caltrans; see Stipulation V and VI
800.3(f)	Individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties	No change

36 CFR §800	Existing Regulation	Programmatic Agreement
800.4(a)(1-4) 800.4(b)	FHWA determines and documents the APE and identifies historic properties within that APE	FHWA delegates this authority to Caltrans. See Stipulation VIII.A and B and Attachment 3
800.4(b)(2)	FHWA may use phased approach to identification and evaluation when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted	No change. Authorizes Caltrans, with FHWA approval, to proceed with identification and evaluation once alternatives are refined or access is gained; see Stipulation XII
800.4(c)(1-2)	FHWA evaluates historic significance of properties within the APE using NRHP criteria	FHWA delegates this authority to Caltrans. Caltrans may exempt certain property types from evaluation; see Stipulation VIII.C and Attachment 4
800.4(d)	FHWA determines whether historic properties may be affected	FHWA delegates this authority to Caltrans; see Stipulation IX
800.5(a)(1)	FHWA applies the Criteria of Adverse Effect	FHWA delegates this authority to Caltrans; see Stipulation X.A
800.5(a)(2)(iii)	Removal of archaeological data is an adverse effect, even if conducted in accordance with the Secretary's of the Interior's standards. Noted in preamble to ACHP's revised 36 CFR part 800 regulations dated 12/12/00, section IV, "Description of Meaning and Intent of Specific Sections," page 77720	Data recovery remains an adverse effect. When project effects are limited to archaeological properties listed in or eligible for the NRHP under Criterion D only, Caltrans submits data recovery plan to FHWA, SHPO and consulting parties. See Stipulation X.C and Attachment 6
800.5(a)(3)	FHWA may use a phased approach in applying criteria of adverse effect when alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted	No change. Authorizes Caltrans, upon approval by FHWA, to proceed in applying criteria of adverse effect once alternatives are refined or access is gained. See Stipulation XII
800.5(c)	FHWA proposes a finding of No Adverse Effect; consults with SHPO and other consulting parties. If SHPO and other parties agree with finding, project may proceed Under 800.5(a)(2)(ii), if a property is restored, rehabilitated or otherwise changed pursuant to the Secretary of the Interior's Standards, the project is not considered to have an adverse effect. See preamble to ACHP's 12/12/00 36 CFR 800 regulations, section IV, "Description of Meaning and	Allows Caltrans to impose Standard Conditions to avoid adverse effects for certain rehab projects, or when properties can be protected by an ESA; Caltrans submits documentation of finding to FHWA, SHPO and other consulting parties; project is not subject to further review For NAE findings <i>without</i> Standard Conditions, FHWA consults with SHPO. See Stipulation X.B and At-

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	Intent of Specific Sections,” page 77720	tachment 5
800.5(c)(2)(i) 800.5(d)(2)	SHPO or other consulting party disagrees with FHWA’s No Adverse Effect finding, or an Adverse Effect cannot be avoided	FHWA retains responsibility for undertakings with AE findings and those with potential involvement under Section 4(f) of the U.S. DOT Act. See Stipulation X.C
800.6(a) 800.6(b)(1)	FHWA consults with SHPO to resolve adverse effects	FHWA, with assistance from Caltrans, consults with SHPO to resolve adverse effects. FHWA may direct Caltrans, to carry out certain actions prescribed in 800.6. See Stipulation XI
800.6(b)(2) 800.6(c)	When ACHP participates in resolution of adverse effects, FHWA consults with SHPO, ACHP, and consulting parties; if all parties agree on resolution, an MOA is executed	Essentially no change. If FHWA, SHPO and Caltrans cannot resolve adverse effects, ACHP is invited to participate. See Stipulation XI.E
800.7 800.7(a)	Failure to resolve adverse effects; termination of consultation	No change; see Stipulation XI.E
800.7(c)(4)	ACHP comments on disagreements between FHWA and consulting parties regarding assessment of effects	Essentially no change. Alternate process developed for ACHP participation due to 9/18/01 court decision invalidating section 800.5(c)(3). See Stipulation X.D
800.11	Documentation standards	All documentation that supports findings and determinations made under the Agreement will be consistent with 800.11
800.11(c)(1 and 3)	FHWA solicits public comment and involvement	FHWA delegates this responsibility to Caltrans; see Stipulation V and VI
800.13(b) 800.13(b)(3) 800.13(c)	Planning for post-review discoveries; FHWA takes action to avoid adverse effects to property(ies), notifies SHPO, consulting parties and ACHP within 48 hours of discovery, can assume property(ies) to be eligible for the NRHP	Caltrans complies with 800.13(b)(3) and 800.13(c). Notifies FHWA, SHPO, and other consulting parties within 48 hours; requests response from notified parties within 72 hours; takes any comments into account, and may carry out appropriate action; see Stipulation XV